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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. 2013 - 373

STATEMENT OF ISSUES

13 **DAISY JANE PENALOSA DURANO, aka**
14 **DAISY JANE DURANO, aka**
15 **DAISY P. DURANO, aka**
16 **DAISY DURANO**

Applicant/Respondent.

17 Louise R. Bailey, M.Ed., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Statement of Issues solely in her official capacity as the
20 Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (the
21 "Board").

22 **Application History**

23 2. On or about January 17, 2012, the Board received an application for a Registered
24 Nurse License from Daisy Jane Penalosa Durano, also known as Daisy Jane Durano, Daisy P.
25 Durano, and Daisy Durano ("Respondent"). On or about December 15, 2011, Respondent
26 certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application.

28 **JURISDICTION**

3. Pursuant to Business and Professions Code ("Code") section 485, subdivision (b), on or about April 26, 2012, Respondent's application was denied and she was notified of the right to a hearing to appeal the denial.

4. On or about June 15, 2012, Respondent requested a hearing to appeal the denial of her application.

STATUTORY PROVISIONS

5. Code section 2736 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under Code section 480.

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for the following:

(a) Unprofessional conduct.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

8. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

1 Any action that a board is permitted to take following the establishment of a
2 conviction may be taken when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal, or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under the
5 provisions of Section 1203.4 of the Penal Code.

6 (3)(A) Done any act that if done by a licentiate of the business or profession in
7 question, would be grounds for suspension or revocation of license.

8 (B) The board may deny a license pursuant to this subdivision only if the crime
9 or act is substantially related to the qualifications, functions, or duties of the business
10 or profession for which application is made.

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(Conviction of a Crime)**

13 9. Respondent's application is subject to denial under Code sections 2761, subdivision
14 (f), and 480, subdivision (a)(1), in that on or about November 23, 2010, in the case of *People v.*
15 *Durano, Daisy Jane P.*, (Superior Ct. Stanislaus County, Case No. 1425392), Respondent was
16 convicted by the Court on her plea of guilty of violating Vehicle Code section 23152, subdivision
17 (b) (operating a vehicle while under the influence of alcohol or drugs while having a blood
18 alcohol level of .08% or greater), a crime that is substantially related to the qualifications,
19 functions, or duties of a licensed registered nurse. The circumstance of the crime is that on or
20 about September 18, 2010, Respondent drove a vehicle while having a blood alcohol level of
21 0.13% which is in excess of .08% and was involved in a collision.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 **(Committed Acts Which If Done By a Licentiate)**

24 10. Respondent's application is subject to denial under Code section 480, subdivision
25 (a)(3)(A), in that she committed acts which if done by a licentiate of the profession would
26 constitute grounds for discipline under Code sections 2761, subdivision (f) (conviction of a crime
27 substantially related to the qualifications, functions or duties of a license holder); 2762,
28 subdivision (b) (convicted of a crime involving the consumption of alcohol); and 2762,
subdivision (c) (used alcoholic beverages to an extent or in a manner dangerous or injurious to
himself and the public), as set forth above in paragraph 9.


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PRAYER

1 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
2 and that following the hearing, the Board of Registered Nursing issue a decision:

- 3 1. Denying the application of Daisy Jane Penalosa Durano, also known as Daisy Jane
4 Durano, Daisy P. Durano, and Daisy Durano for a Registered Nurse License;
5 2. Taking such other and further action as deemed necessary and proper.

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7 DATED: NOVEMBER 5, 2012


LOUISE R. BAILEY, M.ED., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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